

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 402(b)(1)(A))
of the Telecommunications Act of 1996)

CC Docket No. 96-187

DOCKET FILE COPY ORIGINAL

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of the Sprint Local Telephone companies and Sprint Communications Company L.P., hereby submits Comments in response to the Commission's September 6, 1996 Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket.

I. INTRODUCTION.

The Commission issued this NPRM to implement the provisions of Section 204(a)(3) that streamline the LEC tariff process.¹ Specifically, Section 204(a)(3) provides that a LEC tariff containing new or revised charges, etc.:

shall be deemed lawful and shall be effective 7 days (in the case of a reduction of rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action ... before the end of that 7-day or 15-day period
....

1. The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (the "TCA"), Section 402(b)(1)(A)(iii) added new Section 204(a)(3) to the Communications Act of 1934. It is to be codified at 47 U.S.C. Section 204(a)(3) (hereinafter "Section 204(a)(3).")

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II. CONGRESS INTENDED TO FORECLOSE COMMISSION EXERCISE OF ITS AUTHORITY TO DEFER STREAMLINED LEC TARIFFS FOR 120 DAYS.

The Commission tentatively concludes that:

Congress intended to foreclose Commission exercise of its general authority under Section 203(b)(2) to defer up to 120 days tariffs that LECs may file on seven or fifteen days notice.²

Sprint concurs. The specific language in new Section 204(a)(3) that deems tariffs to be effective upon seven day or fifteen notice must take precedence over the more general language in Section 203(b)(2) regarding deferral. To interpret this section otherwise would eviscerate the shortened notice provisions of Section 204(a)(3) and thwart the plain intent of Congress to speed up the effective date of certain LEC tariffs.

III. "DEEMED LAWFUL" MEANS THAT THE TARIFF SHALL BE EFFECTIVE AND PRESUMED LAWFUL IF NO COMMISSION ACTION IS TAKEN WITHIN THE SPECIFIED TIME FRAMES.

The Commission seeks comment on the meaning of "deemed lawful" as used in Section 204(a)(3) and sets forth two possible interpretations. The first option, if adopted, construes Congressional intent to be not just adoption of a streamlined process, but imposition of an entirely new tariff regime. This new regime would overturn long-standing practice by declaring that the decision by the Commission not to suspend and investigate is an actual adjudicative determination of the lawfulness of the rate in the proposed tariff. Accordingly, if the tariff is later challenged, no damages can be awarded for the time period between the effective date of the tariff (under the

2. Notice at para. 6.

new streamlined notice periods) and the date that the Commission declares the tariff to be unlawful.

The Commission's second option would continue existing practice and law and establishes that a Commission decision not to suspend and investigate is only a presumption of lawfulness that allows the proposed tariff to become effective upon the shortened 7-day or 15-day notice periods. Because it is only a presumption of lawfulness and not an adjudicated declaration of lawfulness, damages can be awarded from the effective date of the tariff in the event of a later determination of unlawfulness.

The Commission's second interpretation of the "deemed lawful" language of Section 204(a)(3) is clearly the correct one. There is nothing in the provision itself nor in the legislative history that evidences a Congressional intent to overturn well established precedent that holds that an effective tariff establishes only the legal rate and not the lawful rate. Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co. et al., 52 S.Ct. 183, 184 (1932). There is nothing in the provision itself or in the legislative history that eliminates the Commission's responsibility for determining after investigation that a tariff is lawful under Section 201 and 202 of the Act. Id. And, there is nothing in the provision itself or in the legislative history that Congress intended to change the fact that "a decision to accept a rate filing ... is undeniably interlocutory" and does not decide the merits of the filing. Papago Tribal Utility Authority v. Federal Energy Regulatory Commission, 628 F.2d 235,

240 (D.C. Cir.), cert. denied, 101 S.Ct. 784 (1980).

Moreover, under the Commission's first interpretation, a carrier would be able to implement an unreasonable rate on short notice secure in the knowledge that even if the Commission subsequently found the tariff to be unreasonable in a Section 208 complaint proceeding, the carrier would not have to pay any damages to its customers who had been paying the unlawful rate.³ There is nothing to demonstrate that Congress intended to establish such a perverse result.

At most, Section 204(a)(3) is intended to "speed up implementation of LEC tariffs." NPRM at para. 14. The provision does not change the Commission's mandate under Sections 204 and 205 of the Act to ensure that such rates are lawful or eliminate the ability of a subscriber to such service to demonstrate that the tariff is unlawful and secure damages.

IV. NEW SERVICES ARE NOT COVERED BY THE STREAMLINING PROVISIONS.

The Commission seeks comment on what type or category of LEC tariffs are covered by the 7-day or 15-day streamlined process contained in Section 204(a)(3). The language in the statute is clear and explicit on this point. The word "new" does not modify or relate to a new service. Charges for new services are neither rate reductions nor rate increases, and therefore are not covered by the 7/15 day streamlined tariff filing process. This view is

3. In a Section 208 complaint proceeding the burden of proving a tariff provision unlawful rests with the complainant. If the complainant satisfies such burden, it should be entitled to damages.

further supported by the legislative history of Section 402 of the 1996 Act: "New subsection (b) of section 402 of the conference agreement addresses regulatory relief that streamlines the procedures for revision by local exchange carriers of charges, classification and practices under section 204 of the Communication's Act."⁴

Because almost any change in the terms and conditions under which an existing service is rendered will impact the overall rate or cost to the purchaser, it is appropriate to apply the 7-day or 15-day notice provisions to all tariff filings impacting existing services, not just those that increase or decrease rates.

V. ELECTRONIC FILING OF TARIFFS SHOULD NOT -- AT THIS TIME -- BE REQUIRED.

The Commission seeks comment on whether there are other means by which it can streamline the administration of LEC tariffs and suggests that electronic filing of tariffs may be one possibility. While this may well be a good idea at some time in the future, it is clear that the industry is not in a position to adopt rules at this time. There are no industry standards regarding systems, format or software. It is likely that the systems and software that many LECs have may well be incompatible with what the Commission has. Given this lack of industry standards, it would be prudent at this time to send this issue to appropriate industry fora for review and recommendations. Any

4. Conference Report on S.652, H.R. Report No. 104-458, 104th Congress, 2nd Session 186 (1996) (emphasis added).

recommendations from the industry groups should be released for public comment before adoption of specific requirements.

VI. POST-EFFECTIVE TARIFF REVIEW WILL BE SUFFICIENT; NO ADDITIONAL PRE-EFFECTIVE TARIFF REVIEW REQUIREMENTS ARE NECESSARY.

The Commission notes that today it relies primarily on pre-effective tariff review and expresses concern that it may not be possible under the new streamlined procedures to continue such practice.⁵ Sprint agrees with the Commission that given the new 7-day and 15-day notice requirements the same type of pre-effective tariff review that takes place today is not feasible. However, provided the Commission adopts Sprint's position on "deemed lawful" as being only a presumption of lawfulness (see point III above), Sprint does not believe that post-effective review will prove detrimental. The reviews provided under Section 205 and 208 are still available. With damages available from the effective date of the tariff under the presumed lawful option, the public should not suffer any harm resulting from a primarily post-effective tariff review process.

Given this, and given the amount of detail LECs file today with their tariffs, the Commission should not adopt additional requirements that LECs file summaries and legal analyses of their tariffs with the tariff submissions. The Sprint LECs already file a detailed Description & Justification (D&J) with their tariff submissions. These D&Js contain a description of the service involved, the changes to existing tariff provisions, the

5. NPRM at para. 23.

demand assumptions used, and the proposed new or revised rates. The D&J adequately explains the reason for the tariff filing and demonstrates generally the lawfulness of such tariff filing. Any additional requirements would be redundant and would only add additional burdens on both LECs and Commission staff. Such redundancy and additional burdens are not in keeping with the Congressional intent behind Section 204(a)(3) to establish a "deregulatory national policy frameworkand ... to speed up implementation of LEC tariffs."⁶

VII. NO CHANGES TO EXISTING CONFIDENTIALITY PROVISIONS ARE NECESSARY AT THIS TIME.

The Commission expresses concern that as the LEC marketplace becomes more competitive, the demands for confidential treatment of LEC tariff supporting material will increase. The Commission seeks comment on whether it should take steps to address what potentially will place extra burdens on the Commission and possibly thwart the streamlined effect that Section 204(a)(3) is intended to produce. Consistent with Sprint's position in the Confidential Information docket,⁷ Sprint generally believes that the Commission's rules are adequate at this time. At such time as competition in the LEC marketplace takes hold and accelerates,

6. NPRM at para. 15.

7. In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, Notice of Inquiry and Notice of Proposed Rulemaking, released May 25, 1996, Comments of Sprint Corporation, filed June 14, 1996.

a more liberal use of protective agreements as a means of affording some level of proprietary treatment of competitively sensitive information filed by carriers in their tariff filings may be appropriate. However, this level of competition is not present today.

VIII. THE TARIFF REVIEW PLAN ("TRP") SHOULD NOT BE FILED PRIOR TO THE FILING OF ANNUAL ACCESS TARIFF REVISIONS.

The Commission tentatively concludes that the LEC Annual Access Tariff filings should be filed on the new, streamlined 7-day/15-day process. Sprint agrees. The revisions to the Access Tariff clearly fall within the category of tariff revisions covered by Section 204(a)(3).

The Commission also proposes that the TRP, absent any information on rates, should be filed prior to the actual tariff submission. Such a requirement would provide little, if any, benefit. Without rates, the TRP is pointless. The rates are what drive the indices and thus reporting the indices in the TRP without the rate information would produce no relevant or useful information. Furthermore, the rate and tariff changes must be completed prior to completion of the TRP. Accordingly, requiring TRPs to be filed early will require the LECs to prepare their tariff filing twice, once so that the TRP can be filed, and a second time in the event any changes are necessary due to the review of the TRP. Such duplicate preparation and filing is inconsistent with Congress' intent to establish a deregulatory national policy and to speed up the LEC tariff filing process.

However, Sprint believes it would be beneficial to the

Commission and other interested parties to require the LECs to file their exogenous cost changes and PCI development fifteen days prior to the filing of the Annual Access Tariff. Such a limited prior filing would not produce the burdens outlined above regarding an early submission of the TRP. The PCI development is not dependent on rates or APIs and therefore can be developed early. Additionally, history demonstrates that many of the problems with past LEC Annual Access Tariff filings have arisen in the area of exogenous cost changes. Accordingly, prior filing of this information will be beneficial by ensuring that interested parties and the Commission have adequate time for review.

IX. IN CONFORMING THE COMMISSION'S RULES TO THE NEW NOTICE REQUIREMENTS, THE COMMISSION SHOULD NOT STEP BACKWARDS AND LENGTHEN EXISTING PERIODS.

Section 61.58 of the Commission's Rules, 47 C.F.R. Section 61.58, dealing with tariff filing requirements already establishes certain notice requirements that are shorter than the 7-day/15-day notice provisions contained in Section 204(a)(3). For instance, Rule 61.58(a)(3) requires just 3 days' notice for tariff filings that propose corrections, and Rule 61.58(c)(2) allows for 14 days' notice for price cap LEC tariffs that do not cause any API to exceed applicable PCI. As the Commission amends its rules to implement the new notice requirements of Section 204(a)(3), it should not lengthen those notice requirements that are already less than 7-days/15-days. Such a revision would only represent a step away from a streamlined tariff process.

X. CONCLUSION

Sprint urges the Commission to implement Section 402(a)(3) as outlined above.

Respectfully submitted,

SPRINT CORPORATION

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October 9, 1996

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 9th day of October, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of the Sprint Corporation" in the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.


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